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Liability Assur. Corp., 93 Wis. 201, 67 N. W. 46, 32 L. R. A. 388; *Stephens v. Penn. Casualty Co.*, 135 Mich. 189, 97 N. W. 686, 3 Ann. Cas. 478. It is upon the construction of such policies that the courts encounter difficulty. See *Campbell v. Maryland Casualty Co.*, 52 Ind. App. 228, 97 N. E. 1026. A contract to "indemnify against liability" is construed to render the insurer liable when the insured incurs liability. *Picket v. Fidelity & C. Co.*, 60 S. C. 477, 38 S. E. 160; *Fenton v. Fidelity etc., Co.*, 36 Ore. 283, 56 Pac. 1096.

The pronounced tendency of the courts, to hold the insurance companies liable in any event, has shown itself in these cases. Thus, in two notable cases, on all fours with the principal case, the policies, though expressly stipulating for indemnity, have been construed to be against liability. *Sanders v. Frankfort, etc., Ins. Co.*, 72 N. H. 485, 57 Atl. 655, 101 Am. St. Rep. 689; *Paterson v. Adan*, 119 Minn. 308, 138 N. W. 281, 48 L. R. A. (N. S.) 184. The principal ground upon which these two holdings, and the cases following them, are based, is the fact that the insurer, exercising his option under the insurance policy, defended the suit against the insured. This was construed to change the policy of indemnity to one by way of liability on the ground that the word "defend," as used in the policy means a successful defense through all the proceedings of the suit to execution issued on a judgment. Thus, that if the insurer chose to defend the suit which terminated in a judgment against the insured, the former at once became liable. Such construction would constitute the contract one of indemnity if the insurer declined to defend the suit, otherwise one against liability. *Sanders v. Frankfort, etc., Ins. Co.*, *supra*. Words when used in a legal sense should receive their legal construction. "Defend," in such cases means to bear the burden of the litigation; to defray the expense of carrying it on. See *Munro v. Maryland Casualty Co.*, 48 Misc. Rep. 183, 96 N. Y. Supp. 705. All defense is at an end when final judgment is rendered. There is nothing to do but to pay then, and making payment of the judgment is no part of a covenant to defend the action. *Connolly v. Bolster*, 187 Mass. 266, 72 N. E. 981. Such cases in endeavoring to hold the insurer liable, though equitably in the particular case, make bad law.

The rights of third parties against the insurer must be determined on general principles of law. Not until the relation of debtor and creditor exists between insurer and insured, do third parties, as creditors of the insured, have any right to subject the insurance money in the hands of the insurer. *O'Connell v. New York, N. H. & H. R. R. Co.*, 187 Mass. 272, 72 N. E. 979.

JUDGMENT—JOINT TORT-FEASORS—RELEASE—COVENANT NOT TO SUE.—Plaintiff, having recovered a judgment in an action of fraud and deceit against four joint tort-feasors, executed a general release under seal discharging two of them but expressly reserving to herself all right in and to the judgment and the claim on which it was obtained as against the other two tort-feasors. Held, the release of two of the joint

tort-feasors did not discharge the remaining two. *Mecum v. Becker* (App. Div.), 149 N. Y. Supp. 974.

It is well settled that the release of one joint tort-feasor, in the absence of any reservation of rights against the other tort-feasors, operates as a discharge in law of all. *Gilpatrick v. Hunter*, 24 Me. 18; *Aldrick v. Darnell*, 147 Mass. 409. But there is a decided conflict as to the effect of a release of one or more of several joint tort-feasors with an express reservation of rights against the rest. Some of the courts hold that the reservation is void and that all are released notwithstanding the attempted reservation. *McBride v. Scott*, 132 Mich. 176, 93 N. W. 243, 102 Am. St. Rep. 416, 61 L. R. A. 445. The reasoning upon which this doctrine is based is that, as the tort is integral and indivisible, any claim for injuries therefrom is also indivisible, and if the instrument is held to be a release of any one it must necessarily extinguish the whole claim and release all the joint tort-feasors from any liability thereunder. *Abb v. Northern Pacific Ry. Co.*, 28 Wash. 428, 68 Pac. 954, 92 Am. St. Rep. 864, 58 L. R. A. 293. The reservation is void as being repugnant to the legal effect and operation of the release itself. *Gunther v. Lee*, 45 Md. 60. Other courts hold, and this doctrine seems to be more in accord with the modern view, that such an instrument should be given effect according to the obvious intent of the person executing it, and that it should not be treated as a technical release operating to destroy the cause of action as against any or all of the joint tort-feasors, but rather as a covenant not to sue the party in whose favor the instrument runs. *Gilbert v. Finch*, 173 N. Y. 455, 66 N. E. 133, 61 L. R. A. 807; *Cary v. Bilby* (C. C. A.), 129 Fed. 203.

But a different and somewhat better settled question arises when the release is made to some of the joint tort-feasors, with an express reservation of all rights against the rest, after a judgment has been obtained against all, as in the principal case. For a cause of action founded on tort, when reduced to a judgment, becomes as to all a joint indebtedness, *Missouri K. & T. Ry. Co. v. Haber*, 56 Kan. 717, 44 Pac. 619, and may be released or discharged as to a part of the joint debtors, without releasing the rest, when a statute, as in the principal case, provides that a joint debtor may make a separate composition with his creditor without releasing the others. *Missouri, Kansas & T. Ry. Co. v. Haber*, *supra*. But some cases fail to make any distinction as to whether the release was executed before or after judgment. *Brown's Admins. v. Little* (Ky.), 170 S. W. 168. *Contra, Dulaney v. Buffum*, 173 Mo. 1, 73 S. W. 125. It appears that the soundest basis upon which to place the decision in the principal case is that the judgment created a joint indebtedness and that the statute allowed a part of the joint debtors to be released without discharging the rest. The release cannot reasonably be construed a covenant not to sue since suit had already been brought and a judgment obtained before it was executed. *Ducey v. Paterson*, 37 Col. 216, 86 Pac. 109.

MARRIAGE—ANNULMENT ON THE GROUND OF FRAUD.—The defendant was affected with tuberculosis and had knowledge of the fact. Prior to the